

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ROBERTO M. ESPINOZA CAMACHO
Plaintiff,

V.

NKC TRANSPORTATION, LLC AND
ISMAEL OSTOLAZA RIOS, JR
Defendants.

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Civil Action No. 5:16-cv-353

NOTICE OF REMOVAL

TO THE HONORABLE COURT:

COME NOW Defendants, NKC Transportation, LLC and Ismael Ostolaza Rios, Jr., and file their Notice of Removal, and would respectfully show unto the Court as follows:

PROCEDURAL HISTORY

1. Plaintiff filed suit in Cause No. 2016CVT002899D4, in the 406th Judicial District Court of Webb County, Texas on or about November 10, 2016. Defendant Ismael Ostolaza Rios, Jr. was served through the Texas Transportation Commission on December 1, 2016, and he filed a timely answer on December 9, 2016. Defendant NKC Transportation, LLC was served on December 8, 2016, and it filed a timely answer on December 9, 2016. Plaintiff pleads over \$200,000 in relief sought in his Original Petition.

2. Defendants have therefore filed this Notice of Removal within the time period required by 28 U.S.C. § 1446(b).

3. On the same day Plaintiff filed his Original Petition, Plaintiff filed his Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. Judge Oscar J. Hale, Jr. signed an Order granting a temporary restraining order on November 15, 2016. A

hearing is set in the State District Court for December 12, 2016, at 8:30 a.m. on Plaintiff's temporary injunction.

NATURE OF THE SUIT

4. Plaintiff alleges that on or about October 31, 2016, he sustained damages as a result of a motor vehicle collision that occurred in Webb County, Texas. Plaintiff contends Defendants are responsible for his damages.

5. According to Plaintiff's Original Petition, Plaintiff is a citizen of the State of Texas who resides in Webb County, Texas.

6. Upon information and belief, at the time of the filing of the Defendants' Notice of Removal, Plaintiff is still a citizen of the State of Texas.

7. Upon information and belief, at the time of the subject accident, at the time of the filing of Plaintiff's Original Petition and at the time of filing Defendants' Notice of Removal, Defendant Ismael Ostolaza Rios, Jr. was a citizen of the State of Florida, with a domicile at 984 Maple Forest Drive, Orlando, Orange County, Florida 32825.

8. At the time of the subject accident, at the time of the filing of Plaintiff's Original Petition, and at the time of filing Defendants' Notice of Removal, Defendant NKC Transportation, LLC was a company with its principal place of business at 3811 Gardner Avenue, Kansas City, Jackson County, Missouri, 64120.

9. At the time of the subject accident, at the time of the filing of Plaintiff's Original Petition, and at the time of the Defendants' Notice of Removal, Defendant NKC Transportation, LLC was a company incorporated under the laws of the State of Missouri and whose principal place of business is in the State of Missouri. Defendant NKC Transportation, LLC maintains its citizenship in the State of Missouri.

BASIS FOR REMOVAL

10. Removal is proper because there is complete diversity of citizenship between Plaintiff and Defendants under 28 U.S.C. §1332(a).

11. Plaintiff is an individual who at the time of the subject accident, at the time the lawsuit was filed, and at the time of the Defendants' Notice of Removal was residing in Webb County, Texas, and is a citizen of the State of Texas.

12. Defendant Ismael Ostolaza Rios, Jr. is an individual who, upon information and belief, at the time of the subject accident, at the time the lawsuit was filed, and at the time of the Defendants' Notice of Removal was a citizen of the State of Florida.

13. Defendant NKC Transportation, LLC is a company who at the time of the subject accident, at the time the lawsuit was filed and at the time of the Defendant's Notice of Removal was incorporated under the laws of the State of Missouri, whose principal place of business was maintained in the State of Missouri, and whose citizenship was in the State of Missouri.

14. As alleged in Plaintiff's Original Petition, the amount in controversy exceeds \$75,000.00, exclusive of interests, costs, and attorneys' fees, making removal to federal court proper. 28 U.S.C. §1446(c)(2); *see Saint Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938); *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996).

VENUE AND JURISDICTION

15. Venue for this removal is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

16. This Court has jurisdiction of this action by virtue of the provisions of 28 U.S.C. § 1332 in that this is a case of diversity of citizenship between the parties with the amount in controversy exceeding \$75,000.00, exclusive of interest and costs.

**DEFENDANTS' NOTICE OF REMOVAL
IS PROCEDURALLY CORRECT**

17. Defendants have attached to this notice all process, pleadings and orders filed in the state court action as required by 28 U.S.C. §1446(a).

JURY DEMAND

18. Plaintiff made a demand for a jury trial in State District Court. Defendants Ismael Ostolaza Rios, Jr. and NKC Transportation, LLC also made demands for a jury trial in State District Court.

NOTICE TO STATE COURT

19. Defendants will promptly file a copy of this Notice of Removal with the clerk of the State Court in which this action is pending.

ATTACHMENTS

20. Attached to this Notice are all required state-court documents and other documents required by Southern District of Texas Local Rule 81.

Respectfully submitted,

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By: /s/ Lynn S. Castagna

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing and has been sent via facsimile to the following:

VIA FACSIMILE: 956/728-0883

Roderick C. Lopez
THE LAW OFFICE OF RODERICK C. LOPEZ, P.C.
1004 E. Hillside Road, Suite B
Laredo, Texas 78041

in accordance with the Federal Rules of Civil Procedure, on this 9th day of December, 2016.

/s/ Lynn S. Castagna
Lynn S. Castagna